



February 1, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-0494

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158204.

The City of Mesquite (the "city") received a written request for tapes and transcripts of interviews with certain city fire department personnel regarding an internal affairs investigation of the requestor.¹ Because the request is directed to both the city fire department and the city's civil service director, we deem the request to encompass records held by each of these divisions of the city. You contend that the requested interviews are excepted from required public disclosure pursuant to sections 552.101 and 552.103 of the Government Code.² This office has also received arguments from the requestor as to why the requested information should be released. *See* Gov't Code § 552.304.

¹The requestor also seeks additional records from the civil service office. Because you do not argue that those other records are excepted from public disclosure, we assume that those records have been provided to the requestor. If not, they must be released at this time. *See* Gov't Code § 552.301, .302.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the fire fighters' and police officers' civil service] or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or the police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

....

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for fire fighters: one that is maintained by the city's civil service director and the other by the city fire department.

Section 143.089(a) specifies certain types of information that must be contained in the civil service file; such records are not made confidential under section 143.089 and thus are subject to release unless an exception to required public disclosure applies. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Furthermore, a fire fighter has an affirmative right of access to his own civil service file. Local Gov. Code § 143.089(e). However, information maintained in a fire department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

Information regarding misconduct by a fire fighter must be contained in the civil service file only if the misconduct results in disciplinary action by the fire department "in accordance with this chapter." Local Gov. Code § 143.089(a)(2). Otherwise, those records must be maintained as part of the fire department's internal file contemplated under section 143.089(g). *See generally* Attorney General Opinion JC-0257 (2000). In this instance, you state that "as of this date, [the internal affairs investigation] has not been completed and final determination of disciplinary action has not been made by" the city fire department. You explain that the internal affairs file at issue here is maintained pursuant to section 143.089(g). Based on your representations, we agree that the requested records should not be a part of the civil service file at this time, but rather must be maintained as part of the confidential internal fire department file under section 143.089(g). Consequently, the requestor does not have a right of access to the requested records at this time; the city fire department must withhold these records pursuant to section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

³Because we resolve your request under section 552.101 of the Government Code, we need not address the applicability of the other exception you raised.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

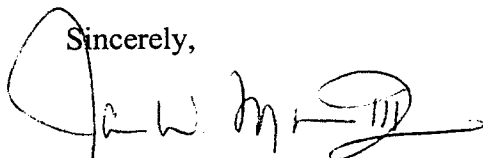
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/sdk

Ref: ID# 158204

Enc: Submitted documents